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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

Case No. 622

JONIE GARDNER LEE, *Petitioner*

v.

UNITED STATES, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO REVIEW THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT DATED SEPTEMBER 29, 1962

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States.

Your Petitioner, Jonie Gardner Lee, respectfully shows unto the Court that he was the defendant in the United States Circuit Court of Appeals, wherein the United States was the Complainant, case No. 8615, which case had been regularly tried in the United States District Court of the United States, Eastern District of North Carolina, Raleigh Division, Criminal No. 47-61, when a Hearing was had before the Court without a jury, after which an appeal

was presented to the 4th Circuit Court of Appeals upon which an opinion and judgment of the Court was entered against Petitioner under date of September 29, 1962, copy of which opinion of said Circuit Court of Appeals is set out in the Appendix hereof and made part of this Petition. App. 3a.

JURISDICTION

The Jurisdiction of this Court is invoked under the provisions of Title 28, subsection (b), sec. 288 of the United States Code Annotated. (Vol. 54 American Jurisprudence, p. 877).

Extension of time to file Petition for Certiorari by Chief Justice Warren, 7 Nov. 28, 1962 (inc.). App. 2a.

THE QUESTIONS PRESENTED

1. Did the Fourth Circuit Court of Appeals, in its decision of September 29, 1962, so far depart from the accepted and usual course of judicial procedure, or so far sanction such departure, as to call for an exercise of this Court's Power of Supervision?

2. Did the District Court and the Circuit Court of Appeals for the Fourth Circuit, so interpret Rule 41(e) and Local Rule 3, in their respective capacities, as to deprive petitioner of his Constitutional rights against wrongful and unreasonable trespass and seizure of his private property, at his place of residence, without first obtaining a search warrant, so as to violate the Fourth Amendment to the Constitution of the United States, and thereby deprive petitioner of his right to be free from such trespass?

3. Was the evidence produced by the United States at Petitioner's trial in the District Court (the contents of a locked room in Petitioner's residence) illegally obtained and should said evidence so obtained, without a search warrant, have been suppressed upon Petitioner's Motion at his Trial in the District Court?

4. Did Rule 41(e) of the Federal Rules of Criminal Procedure and Rule 3 of the District Court bar Petitioner from his right to suppress the evidence submitted against Petitioner at his trial in the United States District Court?

STATEMENT OF FACTS

Counsel for Petitioner has examined and adopts the "*Statement of Facts*" filed by Petitioner, with and considered by the Fourth Circuit Court of Appeals and has also compared this statement factually with that submitted by Attorneys for the United States, in the Court of Appeals, and has also compared it with the Findings of Fact by the Fourth Circuit, and finds no substantial factual variance between them. Counsel also believes the certified testimony at the trial conforms to the statement in Petitioner's "Statement of Facts", reading as follows:

"STATEMENT OF FACTS

The defendant, Jonie Gardner Lee, was arrested in the living room of his home on the night of February 16, 1962, in the presence of his wife. The offense with which he was charged had allegedly taken place at a period from 1955 to 1960 and had *terminated nearly a year before*. It had no connection with any 1961 violation of the Internal Revenue Statutes, but was an entirely separate and distinct offense with no connection with any then present activity and the defendant. No warrant was obtained for the search of his premises and there is no evidence that the officers' purpose upon his premises was for anything other than to make an arrest for an alleged criminal act whose termination was a year in the past. The arrest was made without incident in the living room and without the discovery of any incriminating evidence of any kind.

After the arrest had been completed, Investigator Vassar went through the defendant's house to the back door for the alleged purpose of permitting the entry of Investigator Blake. No logical reason was made to appear for the necessity of admitting Blake although there is testimony, (Record Page 5-6) that his pres-

ence was desired for the purpose of helping secure the prisoner; however, there is no evidence or even intimation that the prisoner made any resistance or in any other manner sought to elude capture, to escape, or to impede the officers in any manner, nor is there any evidence that he was a man from whom resistance might be feared.

While going through the house and in particular through the kitchen to open the back door Investigator Vassar testified that he saw three sixty pound bales of sugar and two cases of half gallon fruit jars and that thereupon suspecting that these materials were there for an illegal purpose and determining thereupon to make a further search of the premises, he had other investigators *returned to the living room where the defendant and his wife were, search the defendant* and took from him his keys. The investigators then opened a room which was locked and in one room found a distillery set up consisting of a two hundred gallon copper still, pot type, fifteen fifty-five gallon wood fermenter barrels, and other apparatus, including some cooler barrels and two sleeve condensers and one gallon of non-tax paid whiskey.

None of the material was visible from the living room, not even the sugar and jars in the kitchen. The entry into the kitchen was not necessary to make the arrest or to secure the person of the defendant, (Record Page 7), or to prevent his escape, but was made merely to suit the personal whim of the investigators, or the convenience of one of them. The resulting discoveries which formed the basis for the indictment in the instant case were, as has been previously stated, in no way connected with the indictment which led to the original arrest, but constituted matter unconnected in time or in any other manner." (Italics supplied)

PETITIONER'S MOTION TO SUPPRESS EVIDENCE SHOULD HAVE BEEN GRANTED

Points Nos. 1 and 2 raise the vital question of a departure by the District Court, and the Court of Appeals, when Petitioner's motion to suppress evidence in the District Court was overruled both as not timely filed and "on the

merits", whereby Rule 41(e) of the Federal Rules of Criminal Procedure (App. 1a) made subservient to Rule 3 of the local rules of the District Court of the Eastern District of North Carolina as to time to file appeal. (App. 3a).

Plaintiff's Motion to suppress vital evidence was construed by the District Court to permit prejudicial evidence obtained by an illegal, wrongful and unreasonable search and seizure of personal belongings of Petitioner found in a locked room in his residence when such search and seizure violated Petitioner's Constitutional rights under the 4th Amendment to the Constitution. See Statement of Facts, p. 3, *supra*.

Rule 41(e) of the Federal Rules of Criminal Procedure (App. 1a), was binding upon the parties and this rule fixed no 5 day time restriction, upon the date of filing a Motion to Suppress evidence. Obviously, local rule 3 (App. 1a) cannot be valid if it grants or denies the effectiveness of Rule 41(e).

Rule 41(e) provides (App. 1a) specifically that a "Motion (to suppress evidence) shall be made "before trial or hearing," and local rule 3—without any rule-making power so to do, adopted local rule 3, inconsistent with 41(e) of the Federal Rules of Criminal Procedure, said rule 3, being an unauthorized assumption of rule-making power. Under Rule 41(e) of the Federal Rules of Criminal Procedure a Motion to Supress may and *must be filed in the District Court before trial.* Certainly the Motion of Petitioner to Suppress Evidence filed in the District Court was, admittedly, filed *before trial,* which made the filing date strictly in conformity with rule 41(e) of the Federal Rules of Criminal Procedure and the conclusion cannot be avoided that neither the Circuit Court of Appeals nor this Court ever authorized the District Court to enlarge the time from a permissive date "before trial" to a period of "five days" before trial. To interpret the language of rule 41(e)

other than to reach the conclusion, herein set out, would be to allow the District Court to make rules and restrictions upon vital motions required of a defendant, within the power of the District Judge rather than within the paramount power of the Supreme Court.

Further, rule 41(e) was adopted in its present form, as was its companion, rule 47, in order to avoid the harshness of prior inadequate protective procedures which this Court desired to strengthen when the Federal Rules of Criminal Procedures were adopted.

It is true, as argued by Government Counsel in their brief before the 4th Court of Appeals, that Petitioner's counsel cross-examined Government witnesses but that fact is no support to his present contentions. The answer to this conclusion is simple: the cross-examination was designed to remove the illegality of the use of the seized testimony, described in Petitioner's Motion to Suppress, which evidence was erroneously construed by the Circuit Court of Appeals when it overruled Petitioner's Motion to Suppress, holding not only that the motion was not filed on time, but also, notwithstanding the record and the evidence of the Government's own witnesses, erroneously denied the Motion "on the merits."

Petitioner was prejudiced by the Circuit Court decision allowing local district Rule to modify, amend, restrict and limit the effect of Rule 41(e), and it follows, beyond doubt or quibbling, that such decision was "inconsistent" with Rule 41(e) and, therefore, void and that Petitioner's Motion to Suppress should have been granted and not overruled.

Contrary to the contention of the United States in the trial court and on appeal in the Circuit Court of Appeals that Criminal Rule 57 allows the District Court to modify or enlarge rules by which it must live, Rule 57 adds weight to our contention, by requiring that all District Court rules

shall be "consistent" with the Federal Rules of Criminal Procedure.

Counsel for Petitioner has carefully read the argument and citations offered the Circuit Court of Appeals by the United States and believe that they do not support the contentions by the United States with respect to Petitioner's Motion to Suppress but do support our contention that the Motion to Suppress should have been granted and the evidence obtained by the wrongful search and seizure suppressed.

Had Petitioner's Motion to Suppress been granted, as we will further demonstrate herein, there would have been no hearing and Petitioner would not have been put to trial but released and the indictment quashed.

The search of Petitioner's locked room—entered by agents of the United States, after forcibly searching petitioner and finding a bunch of keys in his pocket—and after searching said room, without a search warrant, was clearly unconstitutional and wrongful and cannot be excused by the existence of any emergency justifying a seizure and search *without* a search warrant.

Disregarding all immunities of Respondent and with no emergency requiring a search, the agents of the United States searched *throughout* Petitioner's residence with keys abstracted from his pockets, which search was made without any pre-existing ground therefor and after his arrest upon another charge in no way connected with the subsequent indictment for conspiracy as admitted by the agents of the United States who furnished all the evidence in its support. See Statement of Facts p. 3, *supra*.

In the case of *Harris* v. *United States*, 331 U.S. 145, the Court said in quoting *Agnello* v. *United States*, 269 U.S. 30, 70 L. ed. 148, "The right without a search warrant contemporaneously to search persons lawfully arrested while committing crime and to search the place where the arrest is

made in order to find and seize things connected with the crime as its fruits, or as the means by which it was committed, as well as weapons and other things to effect an escape from custody, is not to be doubted." Thus it becomes crystal clear that in the *Harris* case, and in the *Agnello* case, the search was justified, only because it was reasonably made to find and seize things connected with the crime, or as a means by which it was committed. This is emphasized by further statements in the Court's opinion contained in 91 L. ed page 1407 where the Court said the following, "Nor is this a case in which law enforcement officers have entered the premises ostensibly for the purpose of making an arrest, but in reality for the purpose of conducting a general exploratory search for merely evidentiary materials tending to connect the accused with some crime." *Go-Bart Importing Company* v. *United States*, 282 U.S. 344; 75 L. ed. 374; *United States* v. *Lefkowitz*, 285 U.S. 452; 76 L. ed. 877.

For instance, in the *Go-Bart Importing Company* v. *United States*, 282 U.S. 344, the Court said, "The search was not an exploration but was specifically directed to means and instrumentalities by which the crime charged had been committed." No such condition existed in the instant case. Here the seizure of property was by reason of a forcible search of a defendant's pockets and the procurement of a key from their search enabling them to find private property in no way connected with the crime for which the Defendant, as Petitioner here, was arrested.

The U. S. agents testified (see Statement of Facts) that they found certain items of personal property, which they used effectively and that this seized property was used as a basis for proof that Petitioner was guilty of conspiring with others by having these articles in his possession.

An examination of the record (p.....) will show, beyond cavil, that Agents for the Government were not compelled to act by any of the varied emergency conditions which might have excused their forcible and unauthorized search. Permissible conditions which warrant such a seizure without a search warrant are:

1. That they had no time to procure a search warrant;

2. No sufficient reason is shown by the record excusing the officers from obtaining a search warrant;

3. Petitioner was not fleeing from his home or domicile, but had a permanent domicile in the premises, where the Agents had just searched him;

4. The contraband property, (if it were such in law), was not known to exist until "disclosed by an unwarranted search and seizure."

> *Jones* v. *U.S.*, 357 U.S. 403; *District of Columbia* v. *Little*, 339 U.S. 1; American Jurisprudence, Vol. 47, 1961 Supp. 56-57.

This Court has sustained searches and seizure of properties in some cases where the defendant did not establish that the premises constituted his private place of residence or his domicile, or a location which he was occupying as a home, in good faith.

This Court held that a tenant occupying an apartment, as his home, has the same right to protection as one using a residence he owns and occupies. *Jones* v. *United States*, 362 U.S. 257.

This Court only denies to a defendant the "necessary standing" as to his home-ownership and only allows him to claim the right of an unconstitutional search and seizure where he suffers a wrongful search and seizure and on this subject the Court said in the *Jones* case:

> "The settled doctrine is that objection to evidence obtained in violation of the Fourth Amendment may

be raised only by one who claims ownership and the right to possession of the premises searched or the property seized."

In the *Jeffers* case, *U.S.* v. *Jeffers*, 342 U.S. 948, the Court held that the seizure therein described was unlawful and wrongful and declared that the defendant who was using a room in a hotel, assigned to him, gave him the necessary "standing" to move for a suppression of the seized evidence where no search warrant existed.

Searches and seizures have been allowed by this Court only because the record showed that the seizure of things belonging to a defendant was in some way connected with a crime for which he was arrested, or as a means by which it was committed. Here the record shows that the search and seizure complained of were made to support or because of a previous and different charge.

The question of seizure of private property, without a search warrant, following a lawful arrest, was discussed in the case of *Abel* v. *United States*, 362 U.S. 329, This case involved a deportation case and involved a search without a search warrant. In effect, this decision of the Court, by Associate Justice Frankfurter, denied the right of search and seizure involving a private residence, indicating that it might be allowed in a case involving a deportation proceeding "where the arrest is made in order to find seized goods connected with 'a crime or its fruits.'"

An arrest of a defendant for one cause does not allow a search of his premises to secure proof of a possible violation of some other statute or law. *Rabinowitz* v. *U.S.*, 339 U.S. 56.

In the *Rabinowitz* case the officer, an agent of the United States, had a legal warrant but the seizure of private property without a search warrant was disapproved by this Court.

The above cited cases sustain our view that the mere fact that a defendant may be arrested on one charge does not warrant a search and seizure of personal property to prove another criminal charge, the second charge being a distinct violation from the arresting charge.

The search of Petitioner's premises without a search warrant and the seizure of prejudicial contraband articles from a locked room in Petitioner's residence, against his will, was a serious violation of Petitioner's rights under the Fourth Amendment to the Constitution of the United States and was contrary to the weight of authority from the lower Federal Courts and decisions of this Court.

The Fourth Amendment to the Constitution reads as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

It is believed by many jurists that the enactment of the Fourth Amendment to the Constitution was demanded by members of the Constitutional Convention with greater earnestness and insistence than any of the Ten Amendments to the Constitution. This was demanded by the people with such unanimity that the Constitution would never have been adopted, in the opinion of many, but for an agreement among the delegates that they would support the Fourth Amendment in their respective states.

A decision by His Honor, District Court Judge William B. Jones, just handed down during the last week, accords with our views in this case and cites the case of *McKnight against the United States*, in the United States Circuit Court of Appeals for the District of Columbia, 87 App. D.C. 151.

The McKnight case presents the views of the Court of Appeals after great research for and consideration of relevant decisions which case we respectfully cite as a current authority of great significance.

In disposing of the case of the *United States against Langhorne C. Rorer and others*, District Judge Jones said, among other things, that in suppressing the evidence he noted that "The F.B.I. Agents who made the night time raid had arrest warrants but no search warrants" hence the seizure of property as evidence was invalid and the four defendants before him were discharged.

In the case of *Gouled* v. *U.S.*, 255 U.S. 298, this Court said that a defendant's rights to be free from unreasonable searches and seizures:

> "Are to be regarded as the very essence of Constitutional liberty, and that the guaranty of them is as important as are the guaranties of other fundamental rights of the individual citizen."

The record in this case, as shown by petitioner's "Statement of Facts", disproves the existence of any of the conditions warranting search and seizure of defendant's property or to search the locked room in his residence. And we believe the decisions of this Court cited herein, represent the Court's settled and convinced purpose to maintain the rights of the citizen and to assure him full protection against unreasonable searches and seizures of his private residence, and property thereon, as occurred herein.

We quote from American Jurisprudence, Vol. 47—Chapter IV, *Wrongful and Unreasonable Searches and Seizures:*

> Section 16. Searches of dwelling Houses and Buildings.—The only legal means which can be employed to search the premises of a private individual is a search warrant. Neither a private person nor an officer may

break in on the privacy of a home and subject its occupants to the indignity of a search for evidences of crime without a legal warrant for that purpose, and the fact that such a search is made by an officer will not excuse it. Nor is belief, however well founded, that an article sought is concealed in a house sufficient to justify a search thereof without a warrant. Mere suspicion or hearsay that some sort of crime may have been committed in a house or that such house contains some evidence that a crime has been committed is not sufficient justification for a search without a warrant.

American Jurisprudence, Vol. 47, Pages 512 and 513.

CONCLUSION

In view of the long established principles declared by this Court, in many decisions, involving the sacred principles of personal liberty and freedom from an unjust use of government power, prohibited by the 4th Amendment to the Constitution, we urge that this Court issue its Writ of Certiorari to the U. S. Court of Appeals for the Fourth Circuit, commanding it to certify to this Court, the record of the above entitled case *No. 8615*, in said Circuit Court, for review, in order that ultimate justice may be done.

Respectfully submitted,

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